

## Judges' Guide to Mental Illnesses in the Courtroom

### OBSERVATIONS THAT INDICATE A DEFENDANT MAY HAVE A MENTAL ILLNESS

#### When Mental Illness Seems to be a Factor, Consider:

##### Prevalence:

- **Serious Mental Illness:** 17% of adults booked into jails (31% of women; 15% of men)
- **Substance Use Disorder:** 65% of adults in U.S. corrections systems
- **Co-Occurring Mental Illness/Substance Use Disorder:** 72% of adults with serious mental illnesses in jail also had co-occurring substance use disorders

**Contextualizing Observations:** While these categories of observation are provided to alert judges that a person may have a mental illness that requires different judicial action and/or attention by a mental health professional, they are not definitive signs of mental illness. Certain contextual elements are important to remember:

- Appearing in court is an anxiety-provoking experience for most people.
- People may not be prepared to navigate a system as complex and demanding as the criminal justice system.
- People may come to court with skills that have allowed them to survive in their communities but are not conducive to interacting with the court (e.g., toughness, argumentativeness, silence).

<b>Categories of Observation:</b> <i>Do you see something in one of the following areas <u>that does not make sense</u> in the court context?</i>	<b>Courtroom Observations:</b> <i>Examples of how behaviors in the observational areas can indicate that the person may have a mental illness:</i>
<b>Appearance:</b> Age, hygiene, attire, ticks/twitches	<ul style="list-style-type: none"> <li>• Looks older/younger than the listed date of birth</li> <li>• Wears inappropriate attire (e.g., multiple layers of clothing in the summertime)</li> <li>• Trembles or shakes, is unable to sit or stand still</li> </ul>
<b>Cognition:</b> Understanding/appreciation of situation, memory, concentration	<ul style="list-style-type: none"> <li>• Does not understand where s/he is</li> <li>• Seems confused or disoriented</li> <li>• Has gaps in memory of events</li> <li>• Answers questions inappropriately</li> </ul>
<b>Attitude:</b> Cooperativeness, appropriate participation in court hearing	<ul style="list-style-type: none"> <li>• Stays distant from attorney or bench</li> <li>• Acts belligerent or disrespectful</li> <li>• Is not attentive to court proceedings</li> </ul>
<b>Affect/Mood:</b> Eye contact, outbursts of emotion/indifference	<ul style="list-style-type: none"> <li>• Does not make eye contact with judge or court staff</li> <li>• Appears sad/depressed, or too high spirited</li> <li>• Switches emotions abruptly</li> <li>• Seems indifferent to severity of proceedings</li> </ul>
<b>Speech:</b> Pace, continuity, vocabulary ( <i>Note: Can this be explained by discomfort with English language?</i> )	<ul style="list-style-type: none"> <li>• Speaks too quickly or too slowly</li> <li>• Misses words</li> <li>• Uses vocabulary inconsistent with level of education</li> <li>• Stutters or has long pauses in speech</li> </ul>
<b>Thought Patterns and Logic:</b> Rationality, tempo, grasp of reality	<ul style="list-style-type: none"> <li>• Seems to respond to voices/visions</li> <li>• Expresses racing thoughts that may not be connected to each other</li> <li>• Expresses bizarre or unusual ideas</li> </ul>

# JUDICIAL INTERACTIONS

## Before Interacting with a Defendant, Consider:

- **How the courtroom environment is affecting the defendant:**
  - Are there noises or distractions in the courtroom that are negatively affecting the defendant?
  - Is there a family member or defense attorney who can help calm the person?
- **Safety** for yourself, the court staff, and the defendant.
- **What is being asked and said in open court** and how this may affect future proceedings.

## While Interacting with a Defendant, Consider:

<b>Courtroom Situations:</b> <i>Examples of commonly-observed scenarios</i>	<b>Immediate Responses:</b> <i>Recommendations for immediate situation management</i>
<b>When a mental illness is affecting a defendant's courtroom participation</b>	<ul style="list-style-type: none"> <li>• Speak slowly and clearly</li> <li>• Avoid jargon</li> <li>• Explain what's happening</li> <li>• Write instructions down if dates/address are involved</li> <li>• Treat the defendant with the respect you would give other adults</li> <li>• If appropriate, use principles of Motivational Interviewing:* <ul style="list-style-type: none"> <li>• Express empathy</li> <li>• Point out discrepancies between goals and current behavior</li> <li>• Roll with resistance</li> <li>• Support self-efficacy</li> </ul> </li> </ul>
<b>Loss of Reality:**</b> <i>When the defendant appears confused or disoriented</i>	<ul style="list-style-type: none"> <li>• Ground defendant in the here and now**</li> </ul>
<b>Loss of Hope:</b> <i>When the defendant appears sad, desperate</i>	<ul style="list-style-type: none"> <li>• As appropriate, instill hope in positive end result</li> <li>• To extent possible, establish a personal connection</li> </ul>
<b>Loss of Control:</b> <i>When the defendant appears angry, irritable</i>	<ul style="list-style-type: none"> <li>• Listen, defuse, deflect</li> <li>• Ask defendant about why s/he is upset</li> <li>• Avoid threats and confrontation</li> </ul>
<b>Loss of Perspective:</b> <i>When the defendant appears anxious, panicky</i>	<ul style="list-style-type: none"> <li>• Seek to understand</li> <li>• Reassure and calm defendant</li> <li>• Deflect concerns</li> </ul>

## When Taking Action, Consider:

- **Having defendant approach the bench:** Would this de-escalate the situation or create a safety risk?
- **Re-calling the case later in the session/calendar:** Could this help the defendant calm down?
- **Determining whether to proceed:** Is a fitness or competency evaluation appropriate?
- **Setting conditions of release:**
  - Does the defendant have the capacity to understand conditions?
  - Does the defendant have the ability to adhere to conditions?
  - What effect will these conditions have on regularity of treatment?
  - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
  - How will conditions/time in jail affect the defendant's access to a primary caregiver?
- **Requesting mental health information:** What exactly do you need to make the decision facing you?
- **Making a referral (to mental health services provider or other services):**
  - What are the goals of the referral?
  - How might the defendant's cultural background and linguistic needs impact access to services?
  - What are the expectations for reporting back to the court?

\* Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.

\*\*The Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LOSS Model developed by Paul Lilley.